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Supreme Court, U.S.
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No. 10-890

In The Supreme Court of The United States

MIDLAND CENTRAL APPRAISAL DISTRICT,
Petitioner,

v.

BP AMERICA PRODUCTION CO., *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari to the Texas Court of Appeals, Eleventh Appellate District

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court lacks jurisdiction to grant this Petition for Writ of Certiorari involving an attempt to overturn Texas' courts invalidating a tax on oil temporarily located in Texas and Midland County.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner is Midland Central Appraisal District. The Respondents are BP America Production Co., Amerada Hess Trading Company, Chevron USA, Inc., ChevronTexaco Products Company, ChevronTexaco Global Supply and Trading Company, TEPPCO Crude Oil LLC and TEPPCO Crude P/L LLC.

Pursuant to Sup. Ct. R. 29.6, respondents TEPPCO Crude Oil LLC and TEPPCO Crude P/L LLC state that their parent company is Enterprise Products Partners L.P. and that no other publicly held company owns 10% or more of these respondents' stock.[1]

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[1] Effective March 24, 2010, TEPPCO Crude Oil LLC is now Enterprise Crude Oil LLC and TEPPCO Crude P/L LLC is now Enterprise Crude P/L LLC

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES v

INTRODUCTION 1

WHY NO JURISDICTION EXISTS 1

STATE ACTION 1

COUNTERSTATEMENT 2

ARGUMENT 5

I. The Texas Courts Invalidated the Tax Based on State Law 5

II. Opinion and Judgment Based on Adequate, Independent State Grounds, So No Jurisdiction Exists 10

III. Court of Appeals' Ruling on Texas Property Tax Code § 21.02 is Independent of its Writing on the Dormant Commerce Clause 13

CONCLUSION 15

APPENDIX A:

Midland Central Appraisal District v. BP America et al., No. 07-00048 Opinion and Judgment (11th Dist. Ct. App. March 26, 2009) A-1

APPENDIX B:

BP America et al., v. Midland Central Appraisal District No. CV-44864 (Consolidated) Judgment (238th Judicial District Court Dec. 22, 2006) A-22

APPENDIX C:

TEX TAX CODE § 11.01 ..... A-26

APPENDIX D:

TEX TAX CODE § 11.12 ..... A-28

TABLE OF AUTHORITIES

Cases

Abie State Bank v. Weaver, 282 U.S. 765 (1931)..... 11

Aransas County Appraisal Dist. v. Patterson-UTI-Drilling (South) LP, LLLP, No. 13-04-502-CV, 2005 Tex. App. LEXIS 7033 (Tex.App.-- Corpus Christi Aug. 26, 2005, no pet.)(mem. op., not designated for publication)..... 9

Arizona v. Johnson, 129 S.Ct. 781 (2009) 1

Berea College v. Kentucky, 211 U.S. 45 (1908)..... 5

Coleman v. Thompson, 501 U.S. 722 (1991) 1, 2, 13

Diamond Shamrock Ref. and Mktg. Co. v. Nueces County Appraisal District, 876 S.W.2d 298 (Tex. 1994)..... 9

Eustis v. Bolles, 150 U.S. 361 (1893)..... 5

Fairchild Aircraft, Inc. v. Bexar Appraisal Dist., 47 S.W.3d 577 (Tex.App.—San Antonio 2001, *pet. denied*)..... 8

Fox Film Corp. v. Muller, 296 U.S. 207 (1935) 5

General Motors Corp. v. Romein, 503 U.S. 181 (1992)..... 5

Harris v. Reed, 489 U.S. 255 (1989) 1, 12

Herb v. Pitcairn, 324 U.S. 117 (1945)..... 11

In re B.L.D., 113 S.W.3d 340 (Tex. 2003)..... 14

Lambrix v. Singletary, 520 U.S. 518 (1997)..... 2, 6, 14

Michigan v. Long, 463 U.S. 1032 (1983) 1, 4, 12

Midland Central Appraisal District v. BP America Production Company et al., 282 S.W.3d 215 (Tex.App.—Eastland 2009, *pet. denied*)..... 3-4

Milkovich v. Lorain Journal Co., 497 U.S. 1 (2009) 1

Murdock v. Memphis, 87 U.S. 590 (1875) 5
Ohio v. Robinette, 519 U.S. 33 (1996) 1
Pratt & Whitney Canada, Inc. v. McLennan County Appraisal Dist., 927 S.W.2d 641 (Tex.App. — Waco 1996, *writ denied*) 9
Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945) 5
Reconstruction Fin. Corp. v. Beaver County, 328 U.S. 204 (1946) 5
Sochor v. Florida, 504 U.S. 527 (1992) 6
VanDevender v. Woods, 222 S.W.3d 430 (Tex. 2007) 6, 13, 14
Watts v. Indiana, 338 U.S. 49 (1949) 14
Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977). 11

Constitutional Provision

Tex. Const., Art. VIII, § 1(b) 8

Statutes

TEX. TAX CODE § 11.01 ..... *passim*
TEX TAX CODE § 11.12 3
TEX TAX CODE § 21.02 ..... *passim*

Treatises and Other

Chemerinsky, Erwin, *Federal Jurisdiction*, 4th Ed., 2003 2
16B Wright, Miller & Cooper, Jurisdiction 2d §§ 4025-4028 11

INTRODUCTION

The instant Petition for Writ of Certiorari is a continuation of a nine year dispute concerning Midland Central Appraisal District's ("MCAD") ability to list and appraise for property tax purposes crude oil which is located in Texas and Midland County for no more than a temporary period. Through those years, the involvement of three different courts has narrowed the issues to the question of whether the oil is taxable under Texas Property Tax Code §§11.01 and 21.02 ("Tax Code"), and incidentally addressed is taxability under the Commerce Clause of the United States Constitution.

WHY NO JURISDICTION EXISTS

This Court has held that it does not have jurisdiction in a case that has been decided on independent and adequate state grounds. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) ("*Long*"); *See also, Arizona v. Johnson*, 129 S.Ct. 781 (2009); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (2009); *Ohio v. Robinette*, 519 U.S. 33, 33-37 (1996); *Coleman v. Thompson*, 501 U.S. 722 (1991) ("*Coleman*"); *Harris v. Reed* 489 U.S. 255, 261 n. 7 (1989). Throughout the Texas court proceedings, this case has been decided on independent and adequate state grounds; therefore, this Court does not have jurisdiction and should not grant certiorari.

STATE ACTION

The final judgment of the state trial court recites that "[t]he Court renders judgment pursuant to Texas Tax Code section 42.24" and "[i]t is, therefore, ordered, adjudged and decreed that

Plaintiffs' property that is the subject of this lawsuit is not taxable during tax years 2003 and 2004 pursuant to Texas Tax Code sec. 11.01." C.R., 269, 271.

The Texas Court of Appeals affirmed the judgment of the trial court and the Supreme Court of Texas denied the MCAD's Petition for Review. The fact that the court of appeals addressed points of error raised by the MCAD, as it should, and denied them, in no way alters the sole basis for its affirming the trial court judgment, which was Tax Code provisions. A recent opinion of this Court, *Lambrix v. Singletary*, 520 U.S. 518, 522 (1997), restating language from *Coleman*, 501 U.S. at 722 is dispositive, pronouncing "this Court 'will not review a question of federal law decided by a state court if the decision of that court rests on a state ground that is independent of the federal question and adequate to support the judgment'." The Court cannot hear the case if the Court's reversal of the federal law ruling will not alter the result because the state court's decision as to state law will mandate the same outcome. Chemerinsky, *Federal Jurisdiction*, 4th Ed., 2003, p. 686.

COUNTERSTATEMENT

In 2003 for the first time in over seventy years, Petitioner MCAD listed on its appraisal roll crude oil flowing through a common-carrier pipeline system traversing Midland County, some of which MCAD alleged was owned by the TEPPCO Crude Oil LLC and TEPPCO Crude P/L LLC (jointly "TEPPCO") Respondents. *See* R.R., vol. 2 at 64: 11-

14. The oil was held to be only temporarily in Texas and Midland County, thus not taxable under the Tax Code. TEPPCO and other Respondents contested the listing because: (1) the oil is transitory and located only temporarily in the state, so it is not subject to the state's jurisdiction to tax under section 11.01 of the Tax Code; (2) similarly, because the oil is not located in Midland County for more than a temporary period, it never acquired taxable situs there under section 21.02 of the Tax Code; and (3) oil flowing into and across Texas is exempt from *ad valorem* tax under section 11.12 of the Tax Code.[2]

Concluding that under state law, (i) the state lacked jurisdiction to tax the oil and (ii) the oil did not acquire taxable situs in Midland County, the trial court rendered judgment for TEPPCO and the other Respondents based solely on Texas state statutes. TEX TAX CODE §§ 11.01(c); 21.02. Moreover, the trial court made no reference to federal law in its judgment.[3] Nor is federal law referred to in the judgment of the Eleventh Court of Appeals which in pertinent part stated, "... the judgment of the trial court is in all things affirmed."[4] *Midland Central Appraisal District v. BP America*

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[2] Section 11.12 is the codification of a state exemption from property tax for any property that is exempt under federal law.

[3] The trial court did conclude that in the alternative (to a judgment based on state law grounds) the oil was also (but independently) exempt from taxation under federal law. C.R., 348, 354.

[4] While the court of appeals' judgment makes no reference to federal law, its opinion does address and reject the Petitioner's points of error based on federal law.

Production Company et al., 282 S.W.3d 215 (Tex.App.—Eastland 2009, pet. denied) ("*MCAD*").

In *Long*, this Court held that the Court will presume jurisdiction unless the state court opinion "plainly states that it is based on a bona fide separate, adequate, and independent grounds." 463 U.S. at 1040-41. It is clear in the trial court judgment and appellate court judgment and opinion that this case was decided on separate, adequate, and independent state grounds. This is illustrated by the trial court's judgment which does not even mention federal law, and the appellate court opinion which addresses the federal and state law issues completely separate, independent and under bold subject headings.[5] Therefore, the U.S. Supreme Court lacks jurisdiction to grant certiorari in this case.

Because the absence of a jurisdictional basis is so glaring, TEPPCO will not address the merits of Petitioner's federal question in this paper. In the event certiorari is granted and/or further briefing requested, TEPPCO reserves the right to respond to the Petitioner's erroneous contention that the oil is taxable under Commerce Clause jurisprudence.

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[5] For example, the court of appeals below divided its opinion into four main parts which were delineated by Roman numerals I-IV. The third, "*III MCAD's Appeal*" includes two sections, A and B. The latter, section IIIB is entitled: "*B. Was the oil Taxable in Midland County?*." Under that section there are three subsections "*1 Interstate Commerce*", "*2 Validity of Tax Under Commerce Clause*" and "*3 Validity of Tax Pursuant to State Law.*" Emphasis in the original *MCAD*, 282 S.W.3d 215 Appendix A-5, A-7, A-8, A-13, A-17, respectively

ARGUMENT

I. The Texas Courts Invalidated the Tax Based on State Law

In *Murdock v. Memphis*, 87 U.S. 590 (1875) ("*Murdock*") and others that have built on it[6], the court laid down two fundamental propositions. The Court will not review a case, even though it contains a federal question, if there is an adequate state ground that supports the decision of the state court. Further, the Court will accept as binding upon it the state court's decision on questions of state law. It has considered that the state courts speak with final authority on questions of state law. *Murdock*, 87 U.S. at 636.

The exceptions to this principle are very few. Decisions of the state court on state law are only persuasive, rather than controlling, when state law is incorporated by reference in a federal statute, *Reconstruction Fin. Corp. v. Beaver County*, 328 U.S. 204 (1946), or when protection of a federal constitutional right would be thwarted if the state has the last word on state questions, *General Motors Corp. v. Romein*, 503 U.S. 181, 187 (1992), or when the state court interpretation of state law appears to be an "onerous subterfuge to evade consideration of a federal issue." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 129 (1945). Nor can there be review when the state court has decided both the state and

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[6] *Fox Film Corp v. Muller*, 296 U.S. 207 (1935), *Berea College v. Kentucky*, 211 U.S. 45 (1908), *Eustis v. Bolles*, 150 U.S. 361 (1893)

federal questions, if its decision of the federal question was unnecessary in light of its disposition of the state questions. *Sochor v. Florida*, 504 U.S. 527, 534 (1992).

MCAD attempts to frame a constitutional issue of potentially long ranging effect: whether oil passing through Texas on its way to another state is taxable under the Commerce Clause. MCAD lauds the many reasons why this issue needs to be resolved, but this case is an inappropriate vehicle to present that issue because it was decided primarily on independent and adequate state law grounds. In fact, Texas courts are instructed to resolve a case, if possible, on other than constitutional grounds. *VanDevender v. Woods*, 222 S.W.3d 430, 432-33 (Tex. 2007) ("*VanDevender*")

This is another indicia for concluding that the trial and appellate court judgments in this case are based on the Tax Code, independent of and not interwoven with any Commerce Clause considerations. That same judicial restraint is likewise evidenced by this Court not rendering advisory opinions. *Lambrix*, 520 U.S. at 522. Judicial restraint cautions that when a case may be decided on non-constitutional grounds, a decision should rest on that ground and not wade into ancillary constitutional questions. *VanDevender*, 222 S.W.3d at 432-33. Both the trial court and the appellate court exhibited judicial restraint in their judgments.

To understand why the U.S. Supreme Court lacks jurisdiction in this case, a simple illustration is useful: If a state court *invalidates* a tax under both state law and federal law then the U.S. Supreme Court must deny certiorari because the tax would be invalidated even if the state court's federal law ruling were incorrect.[7] But compare if a state court *validated* a tax under state law and federal law then the U.S. Supreme Court can grant review because a reversal of the state court's federal law decision would change the outcome of the case, i.e., the tax would be invalid under federal law. In the present case, the former situation is implicated. Moreover, even if the court of appeals wrongfully applied federal law as subsequently determined by this Court, the judgments of the courts below would stand. Irrespective of the validity of the lower courts' analysis of federal law, in this case the tax remains invalid under state law.

Trial Court Judgment Decided on State Law Grounds

The trial court judgment clearly rests on state law grounds. The court found as fact that the oil was not in Texas or in Midland County for longer than a temporary period, and thus concluded as a matter of law that the state had no jurisdiction to tax it under Tax Code §11.01. C.R., 348, 354 (CL 2). The court also held as fact that the ownership allocation of the tax by MCAD was not reasonably tied to the percentage of ownership of the oil to the

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[7] Of course under this scenario, the Court would never reach the merits of the federal question because the Court would lack jurisdiction

respective Respondents. That fact finding by the court invalidated the tax on another separate state law ground: unlawful multiple taxation. C.R., 348, 351-353. Further, the trial court concluded, as a matter of law, that the oil had not acquired taxable situs in Midland County because it did not remain in the county for more than a temporary period. C.R., 348, 354. The trial court judgment signed by Judge Hyde does not even mention or make reference to federal law.

As the Texas courts exhibited, this case was decided based purely on state law grounds, as there are sufficient state statutes to guide the courts in correctly determining the taxability of the oil. The crux of determining the legality of an *ad valorem* tax in Texas on personal property is determining whether the property is in the state for more than a temporary period. TEX TAX CODE § 11.01 . The genesis of this litigation came from the Respondents primary contention not that the oil was exempt, but that the oil was not taxable at all. Article VIII, section 1(b) of the Texas Constitution and various state statutes (§§11.01, 21.02, etc...) all relate to the determination of whether the personal property is not "in the state", and the state lacks jurisdiction to tax property not "in the state." If the property is not in the state (i.e., not there for more than a temporary period) it is not taxable, and no federal law or question is implicated.[8]

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[8] In *Fairchild Aircraft, Inc v Bexar Appraisal Dist.*, the Court of Appeals concluded that "as a general rule, jurisdiction to tax exists based on the length of time property is located in the taxing unit within Texas." 47 S W 3d 577, 581 (Tex App.—San

The Eleventh Court of Appeals' opinion and judgment upheld the trial court's ruling, solidifying the judgment based on state law grounds. In its opinion, the appellate court held that the tax was not valid under §21.02 of the Tax Code due to the temporary period during which the oil was located in Midland County, additionally writing that such a tax would violate the Commerce Clause. In its judgment, the appellate court held that the "judgment of the trial court is in all things affirmed." In the opinion, the appellate court did address federal law issues first, but, did so, simply because the court was addressing the points of error in the order and sequence in which MCAD had presented them in its appellate brief. The court of appeals, rightly so, was ruling on the issues which the MCAD based its appeal. The court explicitly addressed

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Antonio 2001, pet denied) (citing *Pratt & Whitney Canada, Inc v McLennan County Appraisal Dist*, 927 S W 2d 641 (Tex App —Waco 1996, writ denied) Both cases demonstrate that the Legislature's plain language test under § 11 01 is the threshold inquiry, determines if property "is taxable," and precedes consideration of exemption under state or federal law. In *Pratt & Whitney*, the Court of Appeals held that there was no "taxable value" in dispute if the state has no jurisdiction to tax under § 11 01 *Id* at 643-44 "Whether property is located in a taxing district for more than a temporary period of time is an issue of fact." *Aransas County Appraisal Dist v. Patterson-UTI-Drilling (South) LP, LLLP,* No. 13-04-502-CV, 2005 Tex App. LEXIS 7033 (Tex.App.-- Corpus Christi Aug 26, 2005, no pet)(mem op., not designated for publication) In *Diamond Shamrock Ref. and Mktg Co v Nueces County Appraisal District*, 876 S W.2d 298, 304 (Tex 1994), Chief Justice Phillips states that "oil passing through a county without stopping, in pipelines or on trucks, would thus not be located in that county for more than a temporary period so as to allow taxation under the Code "

situs but not Texas jurisdiction because Texas jurisdiction was not raised as a point of error by the MCAD. However, the trial court did rule upon Texas' lack of jurisdiction to tax the oil, which is the ruling that stands.

Proving that the state law and federal law issues in this case are not so interwoven, as the Petitioner claims, is the court of appeals opinion which has a separate, independent section in the opinion that is entitled (in italics) *Validity of Tax Pursuant to State Law.* (*see* footnote 5, *infra*). Obviously the Eleventh Court of Appeals found that the state law and federal law issues were separate and independent from one another.

II. Opinion and Judgment Based on Adequate, Independent State Ground, So No Jurisdiction Exists

The most important and most difficult limitation on Supreme Court review of state court decisions has been well stated by Justice Jackson:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds... Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same

> judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.

Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945). Granting certiorari review in this case would amount to nothing more than an advisory opinion, because even if the Court reversed the lower courts' analysis and application of federal law, the same overall result would nonetheless occur. A reversal on federal grounds would not necessitate a reversal on state law grounds, because the case was decided based on Texas statutes, Tax Code §§ 11.01 and 21.02, and the MCAD's improper allocation of ownership among the Respondents.

In order to bar Supreme Court review, the state ground must be "adequate." 16B Wright, Miller & Cooper, Jurisdiction 2d §§4025-4028. To bar review, the state ground also must be "independent." The Supreme Court can review if the state ground is "so interwoven with the other as not to be an independent matter." *Abie State Bank v. Weaver*, 282 U.S. 765, 773-777 (1931). The state ground is not independent if the state court appears to have believed that federal law compelled a particular interpretation of state law. *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566-68 (1977). In this case, it is clear that the federal law did not compel nor influence the state law interpretation. The trial court judgment did not even mention federal law, so it explicitly rests solely on adequate, independent state grounds. And the

court of appeals opinion discusses state law and federal law wholly separate from one another.

In 1983, in *Long*, 463 U.S. 1032, the Court announced a then new approach:

> [W]hen, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed the federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedent of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.

Id. at 1040-41. The Court recognized in *Long* that there might still be cases in which clarification of the state decision might be necessary or appropriate. *Id.* at 1041, n. 6, but in most cases it has applied the "plain statement" rule without difficulty. *Harris v. Reed*, 489 U.S. 255, 261, n. 7 (1989). The rule applies regardless of whether the disputed state law ground is substantive or procedural. *Id.* at 261. But there is no need for a plain statement by the state

court to bar Supreme Court review if the decision does not appear to rest primarily on, or to be interwoven with, federal law. *Coleman*, 501 U.S. at 722. The decisions below in this case do not rest primarily on or are interwoven with federal law.[9]

III. Court of Appeals' Ruling on Texas Tax Code § 21.02 is Independent of its Writing on the Dormant Commerce Clause

Under the plain language of the Tax Code, Texas has no jurisdiction to tax the oil in question. Nor did the oil acquire taxable situs in Midland County. The trial court and court of appeals followed the directive in *VanDevender*: "Judicial restraint cautions that when a case may be decided on a non-constitutional ground, we should rest our decision on that ground and not wade into ancillary

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[9] In addition, the existence of differing laws in different states does not confer jurisdiction on this Court For example, inventory (including crude oil inventory like that at issue here) is exempt from property tax in all but 14 states Accordingly, the fact that a petrochemical product in interstate pipelines may be subject to property tax in Oklahoma but not taxable in Texas does not create a constitutional "conflict" To the contrary, it is not uncommon in practice For instance, in Kansas, oil in pipelines is not taxable under state statutes, in Oklahoma oil in pipelines is taxable under state law and federal law, and in Texas oil in pipelines is not taxable under state law and coincidentally not taxable under federal law. Contrary to *amici* (Texas Association of School Boards, *et al* , Chambers County Appraisal District, *et al.*, and Dallas Central Appraisal District) and Petitioner, there is no conflict of law in Texas The Texas Supreme Court twice denied the Petitioner's petition for review, so the law is settled in Texas, with the trial court and appellate court in agreement

constitutional questions." *VanDevender*, 222 S.W.3d at 432-433; *see also In re B.L.D.*, 113 S.W.3d 340, 349 (Tex. 2003) ("As a rule, we only decide constitutional questions when we cannot resolve issues on non-constitutional grounds."). The rule is no different in this Court and it requires a denial of certiorari based on lack of jurisdiction. The U.S. Supreme Court lacks jurisdiction to review on direct appeal a question of federal law decided by a state court, if the state court decision rests on a state law ground that is independent of the federal question and is adequate to support the judgment; since the state law determination is sufficient to sustain the decree, any Supreme Court opinion on the federal question will be purely advisory. *Lambrix*, 520 U.S. at 521-523.

In its judgment, the court of appeals adopted the trial court's findings. The trial court's judgment was based solely on state law ground, with no mention of federal law. The court of appeals affirmed the trial court's fact finding that the oil was not present for "longer than a temporary period," so jurisdiction to tax and taxable situs respectively under Tax Code §§ 11.01 and 21.02 are not met. The relevant facts were determined sufficient to support the judgment and are immutable. On review of decisions of state courts, the stated rule is that "all those matters which are usually termed issues of fact are for conclusive determination by the state courts and are not open for reconsideration by this court. Observance of this restriction in our review of state courts calls for the utmost scruple." *Watts v. Indiana*, 338 U.S. 49, 50 (1949).

CONCLUSION

The trial court's fact finding that the oil was not in Texas for longer than a temporary period, the sufficiency of which was affirmed by the court of appeals, cannot now be challenged by the MCAD. Under this finding, §§ 11.01 and 21.02 of the Tax Code are not met. The MCAD has never alleged that §§ 11.01 and 21.02 are unconstitutional; therefore, there is no federal question in this case in that regard. The conclusions of law of the trial court clearly set out that this is not primarily an exemption case, but a taxability case. In its conclusions of law, the trial court made clear that its judgment was based on §§ 11.01 and 21.02 of the Tax Code and the illegality of the tax based on improper allocation and ownership. The reason the trial court's judgment lacks any reference to federal law is because it is unnecessary. The opinion of the court of appeals indicates a holding based on independent and adequate state law grounds. There is no interweaving.

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Opinion filed March 26, 2009

[STATE SEAL OF TEXAS]

In The
Eleventh Court of Appeals

No. 11-07-00048-CV

MIDLAND CENTRAL APPRAISAL DISTRICT,
Appellant/Cross-Appellee

V.

BP AMERICA ET AL,
Appellees/Cross-Appellants

On Appeal from the 238th District Court
Midland County, Texas
Trial Court Cause No. CV44864 (consolidated)

OPINION

The issue in this case is whether an ad valorem tax may be imposed on crude oil located in Midland County in a tank farm that is an integral part of an interstate, common carrier pipeline system. In its appraisal rolls for 2003 and 2004, Midland Central Appraisal District (MCAD) included oil located in the tank farm on January 1 of the respective years. MCAD

allocated ownership of the oil to various shippers, including BP America Production Company; Amerada Hess Trading Company; Chevron USA, Inc.; ChevronTexaco Products Company; ChevronTexaco Global Supply and Trading Company; TEPPCO Crude Oil LLC; and TEPPCO Crude P/L LLC (hereinafter referred to collectively as the Oil Companies). The Oil Companies properly protested and ultimately brought four separate suits in district court. After consolidating the suits and conducting a nonjury trial, the trial court rendered judgment that the oil was not taxable but denied the Oil Companies' request for attorney's fees. MCAD appeals the trial court's ruling regarding the taxability of the oil, and the Oil Companies appeal the denial of attorney's fees. We affirm.

I. *Issues*

MCAD presents six issues for review. In the first issue, MCAD contends that the trial court erred as a matter of law in determining that the oil is not taxable in Midland County. In the second issue, MCAD contends that the trial court erred in finding that oil had no situs in Midland County. In the third issue, MCAD contends that the trial court erred in holding that the oil was in interstate commerce. In its fourth issue, MCAD challenges the legal and factual sufficiency of several findings of fact and asserts that the trial court erred in considering the oil as individual barrels rather than an aggregate inventory. MCAD argues in its fifth issue that the trial court erred in finding that the tax is not applied to an activity or oil with a substantial nexus to Texas. In its final issue,

MCAD asserts that the trial court erred in finding that MCAD's allocation of ownership of the oil was not reasonable.

The Oil Companies present two issues for review. In their first issue, the Oil Companies contend that the trial court erred in denying their request for attorney's fees because the award of attorney's fees was mandated by statute, specifically TEX. TAX CODE ANN. § 42.29 (Vernon 2008). In their second issue, the Oil Companies assert that MCAD waived its challenge to the award of attorney's fees by requesting findings of fact that support the award.

II. *Background Facts*

The record shows that the underlying facts in this case are largely undisputed. The unchallenged findings of fact indicate that oil at issue in this case was produced mostly in West Texas and a small amount in eastern New Mexico and was injected into the Midland Pipeline System, a spiderweb configuration of interconnecting pipelines covering more than two dozen counties in West Texas and eastern New Mexico. The Midland Pipeline System is an interstate, common carrier pipeline system that is regulated by the Federal Energy Regulatory Commission and is operated by various pipeline companies that are not parties to these proceedings. Upon injection of the subject oil into a pipeline, control and custody was relinquished to the pipeline companies; the oil, being fungible, became part of the common stream of oil.

Oil in the system travels through pipelines in Texas, taking no more than two and one-half weeks, to final destinations at various oil refineries located in Texas and in other states. During the journey, a large amount of oil passes through the tank farm where the Midland Pipeline System converges. The tank farm functions as an integral part of the Midland Pipeline System and exists to facilitate the transportation of the oil, not to store oil. The oil in the tank farm arrives and exits via the Midland Pipeline System. The time from entry into a tank to exit from a tank is six to seventy-two hours. However, a certain minimum volume of cushion oil is required to be maintained in each tank for safety reasons and to meet emission standards, resulting in the constant presence of a large amount of oil in the tank farm. Blending, batching, or staging of the oil may occur at the tank farm as necessary to facilitate the transmission of the oil through the Midland Pipeline System, but these processes do not interrupt the continuity of transit. The tanks are not used for storage.

Oil is bought, sold, and traded by document transfers irrespective of where the oil may be in the system. These transfers do not alter the movement of the oil or interrupt its in-transit movement to refineries. Upon arrival at a refinery, the oil is assessed and listed for taxation by the local appraisal authorities.[1] Furthermore, ad valorem taxes are assessed on the pipelines, tanks, physical assets, and

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[1] We note also that a production tax is levied on oil that is produced in Texas. TEX TAX CODE ANN §202 051 (Vernon 2008).

equipment at the tank farm. In 2003 and 2004, those ad valorem taxes were timely paid.

III. *MCAD's Appeal*

A. Sufficiency of the Challenged Findings.

MCAD challenges several of the trial court's findings regarding the temporariness of the oil in Midland County and in Texas, the continuity of the oil's transit, the ultimate destination of the oil, and the oil's status as being in interstate commerce. MCAD argues in its fourth issue that there is no evidence to support the challenged findings and that the evidence is factually insufficient to support those findings. MCAD also argues in its fourth issue that the trial court erred in considering the oil as individual barrels of oil rather than an oil inventory.

We review sufficiency challenges to a trial court's findings of fact under the same standards that we use to review a jury's findings. *Catalina v. Blasdel,* 881 S.W.2d 295, 297 (Tex.1994); *Anderson v. City of Seven Points,* 806 S.W.2d 791, 794 (Tex.1991). In analyzing a legal sufficiency challenge, we must determine whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review. *City of Keller v. Wilson,* 168 S.W.3d 802, 827 (Tex.2005). We must review the evidence in the light most favorable to the challenged finding, crediting any favorable evidence if a reasonable factfinder could and disregarding any contrary evidence unless a reasonable factfinder could not. *Id.*

at 821-22, 827. We may sustain a no-evidence or legal sufficiency challenge only when (1) the record discloses a complete absence of a vital fact, (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (3) the only evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence conclusively establishes the opposite of a vital fact. *Id.* at 810 (citing Robert W. Calvert, "*No Evidence*" *and* "*Insufficient Evidence*" *Points of Error,* 38 TEX L. REV. 361, 362-63 (1960)). In analyzing a factual sufficiency challenge, we must consider and weigh all of the evidence and determine whether the evidence in support of a finding is so weak as to be clearly wrong and unjust or whether the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. *Dow Chem. Co. v. Francis,* 46 S.W.3d 237, 242 (Tex.2001); *Pool v. Ford Motor Co.,* 715 S.W.2d 629, 635 (Tex.1986); *In re King's Estate,* 150 Tex. 662, 244 S.W.2d 660, 661 (1951). We review a trial court's conclusions of law, including those mislabeled as findings of fact, de novo. *See BMC Software Belgium, N.V. v. Marchand,* 83 S.W.3d 789, 794 (Tex.2002).

At trial, several witnesses, including employees of the pipeline companies, explained that a tank is basically a wide spot in a pipeline and that the tank farm is simply a gathering location of multiple pipelines that bring barrels of oil in at varying rates and varying pressures and allows the oil to be gathered to move on to the next destination. The Oil Companies are not allowed to store oil in the pipeline

system. The oil in the tanks is in constant movement: either filling or withdrawing. After reviewing all the evidence, we hold that, although there is a substantial quantity of oil that is constantly present in the tanks, the trial court's findings regarding the continuity of the oil's transit are supported by legally and factually sufficient evidence.

MCAD also challenges findings regarding the ultimate destination of the oil and the oil's status as being in the stream of interstate commerce. The trial court found that a vast majority of the oil located in the tank farm is sent to refineries located outside of Texas and that less than ten percent of the oil remains in Texas. These findings are supported by testimony showing that the oil passing through the tank farm travels through the pipeline system and can be offloaded at only three refineries in Texas. Testimony showed that the amount of oil offloaded at these three refineries amounts to less than ten percent of the oil that passes through the tank farm in the pipeline system and that "the rest of the oil has to leave the state." After reviewing all of the evidence, we hold that the challenged findings of fact are supported by legally and factually sufficient evidence. To the extent that MCAD's fourth issue challenges the sufficiency of the evidence, it is overruled.

B. Was the Oil Taxable in Midland County?

Unless exempt by law, tangible personal property in Texas is taxable if it is located in Texas for longer than a temporary period, is temporarily located

outside Texas but the owner resides in Texas, or is used continually in Texas. TEX. TAX CODE ANN. § 11.01 (Vernon 2008); *see also* TEX. TAX CODE ANN. § 21.02 (Vernon 2008) (taxable situs in taxing unit). In determining whether the oil at issue in this case was taxable, we address whether the oil was in the stream of interstate commerce, whether the trial court erred in failing to consider the oil as a constant presence in the tanks rather than individual barrels in transit, and whether the oil had situs in Midland County. We ultimately conclude that the tax violated the Commerce Clause of the United States Constitution, U.S. CONST. art. I, § 8, cl. 3, and that the tax was not valid under Section 21.02(a)(1) due to the temporary period during which the oil was located in Midland County.

1. Interstate Commerce.

The first question is whether the oil had been placed into the stream of interstate commerce. MCAD argues that it had not. Interstate commerce "occurs when goods 'have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey.'" *Va. Indon Co. v. Harris County Appraisal Dist.*, 910 S.W.2d 905, 908 (Tex.1995) (*VICO*) (citing *Coe v. Errol*, 116 U.S. 517, 527, 6 S.Ct. 475, 29 L.Ed. 715 (1886)).

The trial court found and the uncontroverted evidence indicates that, prior to making its way to the tank farm, the subject oil was injected into a federally

regulated, interstate common carrier pipeline system. Once injected, the oil remained in the pipeline and under the pipeline's control until it reached its ultimate destination, a refinery. The evidence also shows that the tanks in the tank farm are and were an integral part of the interstate pipeline system and that, although the destination of the oil actually in the tanks at the time of the assessment could not be determined, over ninety percent of the oil passing through the tank farm was transported to refineries out of state. *See Eureka Pipe Line Co. v. Hallanan,* 257 U.S. 265, 272, 42 S.Ct. 101, 66 L.Ed. 227 (1921) (stating that a tank in an oil pipeline "may be regarded as a pipe of larger size").

The next question is whether the oil remained in transit in the stream of interstate commerce when it was at the tank farm. MCAD asserts that the subject oil should be viewed as a massive constant presence of oil in the tank farm and that, if so viewed, it cannot be concluded that the oil was in interstate commerce or that it was only temporarily in Midland County. In support of this contention, MCAD relies upon *Diamond Shamrock Refining and Marketing Co. v. Nueces County Appraisal District,* 876 S.W.2d 298 (Tex.1994), and *Exxon Corp. v. San Patricio County Appraisal District,* 822 S.W.2d 269 (Tex.App.–Corpus Christi 1991, writ denied). We find these cases to be factually distinguishable.

In *Diamond Shamrock,* the supreme court held that oil stored in tanks was subject to an ad valorem tax where the oil was imported from abroad into

Texas, which was its final destination. 876 S.W.2d 298. Upon arriving in Texas, the oil, which was owned by Diamond Shamrock and destined for Diamond Shamrock's refinery in Texas, was offloaded into a storage facility and stored in tanks before being transported to a refinery in another county by pipeline. Although the parties stipulated that the oil at issue was "in transit," the court determined that the situs of each barrel should not be considered because the incidence of the tax imposed was the year-round presence in the storage facility of a large volume of oil belonging to Diamond Shamrock. *Id.* at 300-04. The court in *Diamond Shamrock* specifically limited its holding to foreign goods in transit through only one state that remain in that state. *Id.* at 302, n. 7. Furthermore, the oil at issue in *Diamond Shamrock* was located in a storage facility, whereas the oil at issue in this case had been injected into interstate common carrier pipelines and was located in tanks that were an integral part of the common carrier pipeline system within the stream of interstate commerce. Even when viewed as a constant presence, the oil at issue in this case, like the massive quantity of oil constantly present within the pipelines themselves, was located in the stream of interstate commerce where it had been commingled with oil from numerous other shippers and was-for the most part-being transported to another state.

In *Exxon,* as in the present case, oil that was located in working tanks was taxed. 822 S.W.2d 269. The court ruled that, although each individual barrel remained in the county for no longer than seventeen

days, the oil acquired situs there because Exxon maintained at all times a massive quantity of oil in the tanks. *Id.* at 272-74. As in *Diamond Shamrock,* however, the oil in *Exxon* was not destined for any location outside the State of Texas. The oil at issue in *Exxon* was transported, refined, and sold in Texas. *Id.* at 272. Nothing in the court's opinion in *Exxon* indicates that interstate commerce was involved.

Subsequent to its opinion in *Diamond Shamrock,* the Texas Supreme Court considered and struck down an ad valorem tax assessed on goods that had been placed into the export stream of commerce but were temporarily located in a facility belonging to an independent export packer. *VICO,* 910 S.W.2d at 906-08. Although the court in *VICO* relied upon the Import-Export Clause, U.S. CONST. art. I, § 10, rather than the Commerce Clause to invalidate the tax, the court recognized that the doctrine used to determine whether goods are in transit at the time of taxation applies equally under either clause. *Id.* at 908 & n.1. The court recognized the year-round presence in the packer's facility of goods belonging to VICO but did not rely on the goods' constant presence as a factor in its determination that the goods remained in transit and in the stream of export. *Id.* at 907-14.

In *VICO,* the goods had been committed to foreign export and were transported to the packer's facility to be checked, approved for import into Indonesia, inspected, packaged, and cleared for shipping. *Id.* at 907, 913-14. The court held that the temporary stoppage of the goods at the packer's

facility, which usually took no more than forty-five days, did not break the continuity of transit and that the goods remained in the stream of export. *Id.* at 907, 912-14. In determining whether the stoppage disrupted the continuity of transit, the court in *VICO* followed Supreme Court precedent and reasoned that it "is the *purpose* of the stoppage that is important." *Id.* at 912 (citing *Champlain Realty Co. v. Town of Brattleboro,* 260 U.S. 366, 376-77, 43 S.Ct. 146, 67 L.Ed. 309 (1922), and *Minnesota v. Blasius,* 290 U.S. 1, 11-12, 54 S.Ct. 34, 78 L.Ed. 131 (1933)). When the stoppage is attributable to a business purpose of the owner, the in-transit status is deemed to have terminated, and the goods are subject to taxation in the jurisdiction where they are stopped. *Id.* In contrast, if the stoppage is a necessity of the journey or for the purpose of safety and convenience in the course of the journey, the stoppage does not interrupt the continuity of transit. *Id.*

In the present case, the "stoppage" was not related to a business purpose of the owner. The evidence and the trial court's findings indicate that, barring any malfunction, oil is delayed for six to seventy-two hours in the tank farm for purposes related to the operation of the pipeline system. Each tank is required to maintain 8,000 to 10,000 barrels of oil as a cushion for safety and emission reasons. Oil may also be delayed for blending, batching, or staging-operational functions of the pipeline system that are

necessary to facilitate the transmission of the oil.[2] Thus, as in *VICO*, the "stoppage" of the oil did not interrupt the continuity of transit.

We hold that the trial court correctly determined that the oil was in the stream of interstate commerce. The oil had been injected into a common carrier pipeline system and remained in that interstate system at the time of the tax assessment. Any delay at the tank farm was not attributable to the Oil Companies but, rather, was incidental to the transportation of the oil by the common carrier and was necessary for the safe and efficient operation of the pipeline system.

2. Validity of Tax Under Commerce Clause.

Next, we must determine whether the tax on the oil in interstate transit violated the Commerce Clause. The Commerce Clause grants Congress the power to regulate interstate commerce and implicitly prohibits certain state regulation of interstate commercial activity. *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 115 S.Ct. 1331, 131 L.Ed.2d 261 (1995). However, not all state taxes on interstate commerce are prohibited. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977).

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[2] Blending is the mixing of oil of low sulfur content (sweet crude) with oil of higher sulfur content (sour crude) Batching keeps oil of different grades separate Staging is the accumulation of sufficient volumes of oil necessary for transmission in the pipeline system

Pursuant to *Complete Auto,* a state tax does not violate the Commerce Clause if it meets a four-pronged test set out by the Court. To be valid, the tax must (1) apply to an activity with a substantial nexus with the taxing state, (2) be fairly apportioned, (3) not discriminate against interstate commerce, and (4) be fairly related to the services provided by the state. *Id.* at 279, 287, 97 S.Ct. 1076; *Vinmar, Inc. v. Harris County Appraisal Dist.,* 947 S.W.2d 554, 555 (Tex. 1997). To establish that a state tax is unconstitutional, the taxpayer need only prove that the tax fails one prong of the *Complete Auto* test. *Vinmar,* 947 S.W.2d at 555.

The trial court concluded that the tax violated the Commerce Clause and that the tax did not satisfy the "substantial nexus" requirement of the *Complete Auto* test. The substantial nexus requirement of *Complete Auto* is a means for limiting state burdens on interstate commerce *Quill Corp. v. North Dakota,* 504 U.S. 298, 313, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992).

In support of their contention regarding substantial nexus, the Oil Companies cite to a recent opinion of the Texarkana Court of Appeals, *Peoples Gas, Light, & Coke Co. v. Harrison Central Appraisal District,* 270 S.W.3d 208 (Tex.App.–Texarkana 2008, pets. filed). In *Peoples,* the court struck down an ad valorem tax assessed against the owner of natural gas on gas that had been placed into the stream of interstate commerce and was located in an underground storage facility owned by an interstate

pipeline company. The court determined that the tax violated the Commerce Clause because the gas owner's activities in Texas and its connection to Texas were too tenuous to create a substantial nexus. 270 S.W.3d at 218.

In contrast, MCAD asserts that we should not follow *Peoples* but should instead follow the decision reached by the Supreme Court of Oklahoma in *In re Assessment of Personal Property Taxes Against Missouri Gas Energy, a Division of Southern Union Co.*, No. 103,355, 2008 WL 4648330 (Okla. Oct.21, 2008). In *Missouri Gas*, the court upheld an ad valorem tax on gas held in an underground storage facility owned and operated by an interstate, common carrier pipeline. Missouri Gas Energy owned the gas, which was ultimately transported out of state. The Oklahoma court determined that the gas was not merely passing through the county to an out-of-state destination because the large volumes of gas that were stored in the facility for a substantial part of the year were "not in transit in such a way as to invoke the protection of the Commerce Clause." 2008 WL 4648330, at *11.

We find at least one crucial fact of *Missouri Gas* to be distinguishable from the facts of the present case. The crude oil in the present case was not in storage but, rather, was in transit in the stream of interstate commerce. For this same reason, the case at hand presents an even stronger case for a Commerce Clause violation than did the circumstances in *Peoples*.

To comply with the first prong of the *Complete Auto* test, the ad valorem tax on the oil in the tank farm must have applied to an activity with a substantial nexus with Texas. Although the oil itself had a substantial nexus with this state as much of it was produced in this state and some of it was destined for an in-state refinery, the "activity" being taxed had no such nexus. The activity essentially being taxed in this case was the ownership of oil that was present but in transit on January 1 in a tank farm that constituted an integral part of an interstate, common carrier pipeline system.

Furthermore, if the tax in this case is upheld, then ad valorem taxes could potentially be levied by any taxing authority on oil in transit but located, at the time of assessment, in the portion of an interstate pipeline system within the boundaries of that taxing authority. The result would be an impermissible multiple burden on interstate commerce. *See Michigan-Wisconsin Pipe Line Co. v. Calvert,* 347 U.S. 157, 170, 74 S.Ct. 396, 98 L.Ed. 583 (1954) (holding that tax on taking of gas into interstate pipeline infringed upon the Commerce Clause and recognizing that such tax would permit a multiple burden upon commerce because other states could impose a tax on the first taking of the same gas in their state). We hold that the tax in the present case does not satisfy the *Complete Auto* test and that it runs afoul of the Commerce Clause.

3. Validity of Tax Pursuant to State Law.

Section 21.02 provides in relevant part that tangible property in Texas is taxable by a taxing unit if "it is located in the unit on January 1 for more than a temporary period." Section 21.02(a)(1).[3] The trial court concluded that the oil was not located in Midland County for longer than a temporary period. We agree.

As discussed above, the record shows that the oil had been injected into an interstate, common carrier pipeline system; that the oil merely traveled through Midland County in the pipeline system; that any delay of the oil in the tank farm was temporary and was necessary only to facilitate the continued transportation of the oil; and that the tank farm was not used for storage. Although much of the oil had a nexus with Texas in that it was produced in Texas, it had no such nexus with Midland County. The oil was merely transported through Midland County and was only temporarily located in the county. Thus, we hold

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[3]We note that MCAD asserts in its brief that the oil is also taxable pursuant to Section 21 02(a)(4), which allows personal property to be taxed if "the owner resides (for property not used for business purposes) or maintains the owner's principal place of business in this state (for property used for business purposes) in the unit and the property is taxable in this state but does not have a taxable situs pursuant to Subdivisions (1) through (3) of this subsection " However, the trial court made no findings of fact on this issue, and MCAD did not request that the trial court make a finding regarding the principal place of business Moreover, the evidence does not indicate that Midland County is the principal place of business in this state for any of the Oil Companies

that the trial court did not err in concluding that the oil had no taxable situs in Midland County.

The tax was not valid under the Commerce Clause or Section 21.02(a)(1). Consequently, MCAD's first, second, third, fourth, and fifth issues are overruled. We need not reach MCAD's sixth issue concerning allocation of ownership. TEX. R. APP. P. 47.1.

IV. *Oil Companies' Appeal*

The Oil Companies appeal the trial court's refusal to award them attorney's fees. In Texas, attorney's fees are recoverable from an opposing party only when authorized by statute or by contract between the parties. *Travelers Indem. Co. of Conn. v. Mayfield,* 923 S.W.2d 590, 593 (Tex. 1996). The Oil Companies assert that attorney's fees were authorized by Section 42.29 of the Tax Code. The trial court entered findings of fact as to the amount of attorney's fees that would be reasonable if recoverable under Section 42.29. The trial court concluded, however, that the Oil Companies were not entitled to attorney's fees under Section 42.29.

Section 42.29 provides that a "property owner who prevails in an appeal to the court under Section 42.25 or 42.26 may be awarded reasonable attorney's fees." TEX. TAX CODE ANN. § 42.25 (Vernon 2008) provides a remedy for an excessive appraisal, entitling the owner to a reduction of the appraised value on the appraisal roll. TEX. TAX CODE ANN. § 42.26 (Vernon

2008) provides a remedy for the unequal appraisal of property in relation to the appraised values of other properties. Sections 42.25 and 42.26 do not apply to this case because the Oil Companies did not challenge the appraised value of the oil; they challenged the ability of Midland County to tax the oil. Consequently, since the Oil Companies did not prevail on a claim "under Section 42.25 or 42.26," attorney's fees were not authorized by Section 42.29. If the legislature had intended for attorney's fees to be recoverable in a case of this type, it could have included in its Section 42.29 authorization of attorney's fees an appeal challenging the inclusion of the property on the appraisal roll, the determination of ownership, or the denial of an exemption. The legislature specifically authorized such protests in TEX. TAX CODE ANN. § 41.41(a) (Vernon 2008) (listing nine distinct actions that may be protested by taxpayer, including: excessive value, unequal appraisal, denial of an exemption, ownership, and inclusion on tax roll). The legislature, however, did not authorize attorney's fees for all such protests. Section 42.29 authorizes attorney's fees for only two distinct types of protest: excessive value and unequal appraisal. *Dallas Cent. Appraisal Dist. v. Seven Inv. Co.*, 835 S.W.2d 75, 77-79 (Tex. 1992). The Oil Companies' protest cannot be categorized as falling within either of those two. *See id.* The Oil Companies' first issue is overruled.

In the second issue, the Oil Companies assert that MCAD waived any complaint it had to the award of attorney's fees by requesting findings of fact that supported an award of attorney's fees. We disagree.

MCAD repeatedly objected to issues related to the prospective award of attorney's fees, and MCAD did not request any findings of fact that would entitle the Oil Companies to attorney's fees or waive MCAD's objection to such fees. MCAD merely requested that the trial court amend its findings regarding attorney's fees to omit the phrase "recoverable under Tax Code § 42.29." The requested amendments reflected MCAD's continued objection to the award of attorney's fees and continued contention that the fees were not "recoverable." Moreover, MCAD did not ask the trial court to amend Conclusion of Law No. 9, wherein the trial court concluded: "The Oil Companies are not entitled to attorney's fees under Tax Code § 42.29." MCAD did not waive its complaint to the award of attorney's fees. The Oil Companies' second issue is overruled.

V. *Conclusion*

The judgment of the trial court is affirmed.

JIM R. WRIGHT
CHIEF JUSTICE

March 26, 2009

Panel Consists of: Wright, J.J.,
McCall, Jr., and Strange, J.

11th COURT OF APPEALS
EASTLAND, TEXAS

JUDGMENT

Midland Central Appraisal District,

Vs. No. 11-07-00048-CV

BP America Production Company et al,

* From the 238th District Court of Midland County, Trial Court No. CV 44864 (consolidated)

* March 26, 2009

* Opinion by Wright, C.J.
(Panel consists of: Wright, C.J., McCall, J., and Strange, J.)

This court has inspected the record in this cause and concludes that there is no error in the judgment below. Therefore, in accordance with this court's opinion, the judgment of the trial court is in all things affirmed. The costs incurred by reason of this appeal are taxed against Midland Central Appraisal District.

APPENDIX B

[DATE STAMP]
FILED
2006 DEC 22 AM 11:13
[ILLEGIBLE] DISTRICT CLERK
MIDLAND COUNTY, TEXAS
BY, _____
DEPUTY

NO. CV44864 (consolidated)

BP AMERICA PRODUCTION COMPANY,
Plaintiff,

v.

IN THE DISTRICT COURT
MIDLAND COUNTY, TEXAS
238th JUDICIAL DISTRICT

MIDLAND CENTRAL APPRAISAL DISTRICT,
Defendant.

NO. CV44867

AMERADA HESS TRADING COMPANY,
Plaintiff,

v.

IN THE DISTRICT COURT
MIDLAND COUNTY, TEXAS
385th JUDICIAL DISTRICT

MIDLAND CENTRAL APPRAISAL DISTRICT,
Defendant.

NO. CV44863

CHEVRON USA, INC.,
CHEVRONTEXACOPRODUCTS COMPANY, and
CHEVRONTEXACO GLOBAL SUPPLY AND
TRADING COMPANY,
Plaintiffs,

v.

IN THE DISTRICT COURT
MIDLAND COUNTY, TEXAS
142nd JUDICIAL DISTRICT

MIDLAND CENTRAL APPRAISAL DISTRICT,
Defendant.

NO. CV44865

TEPPCO CRUDE OIL LLC and
TEPPCO CRUDE P/L LLC
Plaintiffs,

v.

IN THE DISTRICT COURT
MIDLAND COUNTY, TEXAS
238th JUDICIAL DISTRICT

MIDLAND CENTRAL APPRAISAL DISTRICT,
Defendants.

FINAL JUDGMENT

Beginning on October 9, 2006, the above-styled and numbered cause of action was presented for trial before this Court. Each party appeared by its attorneys of record and announced that it was ready to present evidence.

All matters in controversy, legal and factual, were submitted to the Court for its determination without a jury until all the parties rested on November 3, 2006. The Court heard the evidence and arguments of counsel and, on November 30, 2006, returned its decision for Plaintiffs, announcing that judgment would be rendered. The Court renders judgment pursuant to Texas Tax Code section 42.24.

1. It is, therefore, ordered, adjudged and decreed that Plaintiffs' property that is the subject of this lawsuit is not taxable during tax years 2003 and 2004 pursuant to Texas Tax Code §11.01.

2. It is further ordered, adjudged and decreed that Defendant shall remove all of Plaintiffs' property that is the subject of this lawsuit from the Midland Central Appraisal District appraisal roll for tax years 2003 and 2004.

3. It is further ordered that Plaintiff shall recover court costs from Defendant as provided in Texas Tax Code §42.07 as approved by the Court in the final bill of costs.

4. It is further ordered that Defendant shall comply with all postappeal administrative procedures as set out in Subchapter C of the Texas Tax Code, sections 42.41 through 42.43.

5. Plaintiffs' request for attorneys' fees based on Texas Tax Code section 42.29 is denied.

6. This judgment disposes of all claims and all parties and is, therefore, a final and appealable judgment.

SIGNED on the 22nd day of December, 2006

/s/
The Honorable Judge John G. Hyde

APPENDIX C

Title 1. Property Tax Code
Subtitle C. Taxable Property and Exemptions

Chapter 11. Taxable Property and Exemptions

Subchapter A. Taxable Property.

Sec. 11.01. Real and Tangible Personal Property.
Sec. 11.02. Intangible Personal Property.

[Sections 11.03 to 11.10 reserved for expansion]

Sec. 11.01. Real and Tangible Personal Property.

(a) All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.

(b) This state has jurisdiction to tax real property if located in this state.

(c) This state has jurisdiction to tax tangible personal property if the property is:

(1) located in this state for longer than a temporary period;

(2) temporarily located outside this state and the owner resides in this state; or

(3) used continually, whether regularly or irregularly, in this state.

(d) Tangible personal property that is operated or located exclusively outside this state during the year preceding the tax year and on January 1 of the tax year is not taxable in this state.

Amended by 1983 Tex. Laws, p. 1908, ch. 353, Sec. 1; amended by 1989 Tex. Laws, p. 1751, ch. 534, Sec. 2.

APPENDIX D

Sec. 11.12. Federal Exemptions

Property exempt from ad valorem taxation by federal law is exempt from taxation.

Acts 1979, 66th Leg., p. 2234, ch. 841, §1, eff. Jan. 1, 1980.